

FINAL STATEMENT OF REASONS

SPECIFIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THAT THE REGULATIONS ARE INTENDED TO ADDRESS

Proposition 39, enacted by the voters on November 7, 2000, changed the required local voter approval of public school and community college general obligation bonds from two-thirds to fifty-five percent of the votes. It also amended Education Code section 47614, imposing a new requirement that school districts provide facilities to charter schools operating in their jurisdictions.

As amended, Education Code section 47614 contains the following specific provisions:

- It is the intent of the people that all public school facilities should be shared fairly among all public school pupils, including those in charter schools.
- School districts must make facilities available to charter schools that either are providing classroom education to at least 80 in-district students or have identified at least 80 in-district students meaningfully interested in attending the charter school in the next year.
- Facilities must be sufficient to accommodate the charter school's in-district students.
- The condition of the facilities must be reasonably equivalent to facilities other district students attend.
- Facilities must be contiguous, furnished, and equipped, and remain school district property.
- School districts must make reasonable efforts to provide facilities near where the charter school wishes to locate, and must not move the charter school unnecessarily.
- For use of the facilities, school districts may charge charter schools no more than a pro rata share of the school district's facilities costs paid from unrestricted general fund revenues.
- No school district is required to use unrestricted general fund revenues to rent, buy, or lease facilities for charter schools.
- Charter schools desiring facilities from a school district must provide reasonable projections of the average daily classroom attendance (classroom ADA) of in-district students.
- School districts must base facilities allocations on the projections supplied by the charter school.
- Charter schools must reimburse school districts for over-allocated space in the event that actual in-district classroom ADA is less than projected, based on reimbursement rates to be established by the State Board of Education.
- The measure takes effect on November 8, 2003—sooner in school districts holding successful local school bond elections.

Education Code section 47614 requires the State Department of Education (California Department of Education, CDE) to develop, for State Board of Education (State Board) consideration, regulations implementing the measure. The regulations must include, but are not limited to:

- Defining the terms “classroom ADA,” “conditions reasonably equivalent,” “in-district students,” and “facilities costs.”
- Defining procedures and establishing timelines for the request for, reimbursement for, and provision of, facilities.

In addition, Education Code section 47614(b)(2) requires the State Board to set reimbursement rates for over-allocated space.

SPECIFIC PURPOSE OF THE REGULATIONS

The proposed regulations implement the requirements in Education Code section 47614 that CDE propose regulations defining terms and establishing procedures and timelines and the State Board set reimbursement rates for over-allocated space. In addition to addressing the items specifically identified in the measure, the proposed regulations define the terms “operating in the school district,” “contiguous,” and “furnished and equipped.” They also specify responsibilities with respect to maintaining facilities provided to a charter school by a school district, and require reporting of classroom ADA to support the determination as to whether space has been over-allocated.

AUTHORITY AND REFERENCE

Authority for the proposed regulations is provided in Education Code section 47614(b). Education Code section 47614(b) states that the State Board may adopt regulations implementing subdivision (b), including but not limited to, defining the terms “average daily classroom attendance,” “conditions reasonably equivalent,” “in-district students,” and “facilities costs.” The regulations may also define the procedures and establish timelines for the request for, reimbursement for, and provision of, facilities.

The reference for the proposed regulations is Education Code section 47614.

NECESSITY

The proposed regulations are necessary to implement the requirements established by Education Code section 47614. Specifically, the proposed regulations clarify the circumstances in which charter schools are entitled to receive facilities from school districts, specify the obligations of school districts in supplying facilities to charter schools, and establish a process for school districts and charter schools to use in implementing Education Code section 47614.

The rationale for each specific regulation follows by section.

Section 11969.1. Purpose.

This section states that the group of sections that follow govern provision of facilities by school districts to charter schools under Education Code section 47614. This section serves as an introduction to the group of sections and also restricts the application of these proposed regulations to the provision of facilities under Education Code section 47614. Thus, charter

schools and school districts may continue existing facilities arrangements or develop new arrangements outside of Education Code section 47614, which would not be subject to the regulations.

Section 11969.2. Definitions.

Subdivision (a) defines “average daily classroom attendance,” or “classroom ADA.” This is one of the definitions that Education Code section 47614 requires CDE to develop. The regulation defines classroom ADA as ADA for classroom-based apportionments as used in Education Code section 47612.5. This section defines classroom-based instruction at a charter school as occurring only when charter school pupils are engaged in educational activities required of those pupils and under the immediate supervision and control of a certificated employee. The section references classroom-based instruction apportionments as used in Education Code section 47612.5, which was added by Senate Bill 740 (SB 740, Chapter 892, Statutes of 2001). SB 740 places restrictions on funding for non-classroom-based instruction provided by charter schools.

The State Allocation Board has developed a procedure for determining which students are students of the school district and which students need classroom space in connection with calculating school districts’ entitlement to state bond funding for facilities. The definitions in this proposed regulation take a different approach than the approach taken by the State Allocation Board. The differences in the approach and the rationale for the differences are discussed together below under subdivision (c).

Subdivision (b) defines “operating in the school district” as it is used in Education Code section 47614. The definition of “operating” in Education Code section 47614(b)(5) focuses on the possibility that a charter school may or may not actually be serving students at the time of the facilities request; thus, a charter school that is not yet actually serving students may nevertheless be considered to be “operating.” Clarification of the statutory definition is necessary because it does not address (1) whether the charter school requesting facilities must be physically located in the school district and (2) whether the charter school must have received its authorization (charter) from the school district from which it is requesting facilities.

Subdivision (b) clarifies that both the actual physical location of the charter school’s facilities (if any) at the time of the request and whether or not the school district authorized the charter are irrelevant to the determination as to whether the charter school is entitled to request facilities from a given school district. With this clarification, the important factor in this determination remains the enrollment or likely enrollment of in-district students—the factor cited in the statutory definition.

Subdivision (c) defines “in-district student” to be a student who is both entitled to attend district-operated schools and could attend district-operated schools. This is one of the definitions that Education Code section 47614 requires CDE to develop. The entitlement to attend district-operated schools is set forth in various sections of the Education Code and is usually based on residence location. The requirement that an in-district student must be able to attend district-operated schools is intended to limit the definition of in-district students only to those students

that are in grades offered by the school district—thereby preventing charter high schools from requesting facilities from an elementary school district, for example.

The proposed regulations exclude from the definition of “in-district student” those students who attend district schools based on interdistrict attendance permits or based on parental employment. These students do not need special permission to attend the charter school because charter schools do not have attendance areas. Allowing these students to be considered in-district students would create an incentive for charter schools to encourage their students to apply for in-district status and would create an unnecessary workload pressure for the school district.

The State Allocation Board has developed a procedure for determining which students are students of the school district and which students need classroom space in connection with calculating school districts’ entitlement to state bond funding for facilities. Students are considered to be students of the school district if the district includes the students in the counts it submits to the California Basic Educational Data System (CBEDS). Under CBEDS, charter school students are counted in the district that authorized the charter, regardless of where they live. Charter school students are assumed to need classroom space if they are in independent study programs but not if they attend a charter school via the Internet or by a home school program.

The definitions in subdivisions (a) and (c) take a different approach than the approach taken by the State Allocation Board. With respect to determining whether charter school students are considered to be students of the school district, subdivision (c) provides that charter school students are in-district students by virtue of their residence, while the State Allocation Board uses CBEDS reporting rules. This is based on interpreting Education Code section 47614 as intending to limit the obligation of school districts so that they are required to provide facilities only for charter school students that they would otherwise be required to house. A variety of individual provisions in the section support this interpretation; the primary support is that there would be no need to define “in-district students” if the proponents intended all students of the charter school to be included.

With respect to determining whether charter school students are entitled to classroom space, subdivision (a) provides that the students are entitled to classroom space only if they receive classroom-based instruction, as defined. The State Allocation Board procedure, in contrast, includes some students who do not now need classroom space, such as students in independent study programs, on the basis that these students may need classroom space eventually thus should be included for facility planning purposes. The approach taken by this regulation is more appropriate for purposes of short-term facility allocations.

Subdivision (d) defines “contiguous” as contained on the school site or immediately adjacent to the school site. Education Code section 47614 requires that facilities allocated to a charter school be contiguous. The main purpose of subdivision (d) is to provide guidance in the situation where no single school site operated by a school district is large enough to accommodate the charter school. Subdivision (d) states that contiguous facilities can also include facilities located at more than one site, provided that the school district shall minimize the number of sites assigned and shall consider student safety.

Subdivision (e) defines “furnished and equipped” to mean that a facility contains all the furnishings and equipment necessary to conduct classroom-based instruction, including desks, chairs, and blackboards. This subdivision has the effect of clarifying that school districts are not responsible for providing such items as computers and office machines.

Section 11969.2 specifically does not provide any guidance on what should be considered “reasonable efforts to provide the charter school with facilities near to where the charter school wishes to locate.” This is because the statutory language provides a balance between favoring charter school students and favoring students in district-operated programs. The intent language in Education Code section 47614(a) states that public school facilities should be shared fairly among all public school pupils, including those in charter schools.

Section 11969.3. Conditions Reasonably Equivalent.

This section identifies the criteria for determining whether facilities provided to a charter school are sufficient to accommodate charter school students in conditions reasonably equivalent to those in which the students would be accommodated if they were attending public schools of the district providing facilities, as required by Education Code section 47614. Education Code section 47614 requires CDE to develop a definition of “conditions reasonably equivalent.”

The proposed regulation divides “conditions reasonably equivalent” into two parts: the capacity of a facility proposed for a charter school and the condition of that facility.

The first sentence provides an introduction to the three subdivisions. The first subdivision identifies a comparison group of school district facilities for use in determining whether a facility proposed for a charter school is reasonably equivalent to the school district facilities that charter school students would otherwise attend. The second subdivision specifies the method for determining whether the capacity of a facility proposed for a charter school is reasonably equivalent to the capacity of facilities in the comparison group (the number of students per classroom, for example). The third subdivision specifies the method for determining whether the condition of the facility is reasonably equivalent to the condition of facilities in the comparison group (the condition of the roof, for example).

Subdivision (a) identifies a comparison group of school district facilities for use in determining whether a facility proposed for a charter school is reasonably equivalent to the school district facilities that charter school students would otherwise attend. Specifically, the subdivision requires that the comparison group consist of schools with similar grade levels that serve students living in the high school attendance area in which the largest number of charter school students reside. The subdivision establishes a standard that is a middle ground between a comparison group that consists of all district-operated schools and a comparison group that consists of one to three schools. Using all district-operated schools as the comparison group would present administrative and data problems for school districts. In addition, for large school districts, using all district-operated schools as the comparison group would result in a standard that might be significantly different than the neighborhood schools the charter school students would otherwise attend. (This is because in large school districts the conditions in schools may

vary widely from neighborhood to neighborhood.) Using one to three schools would result in a group that is too small and would result in problems agreeing on the group selected.

Subdivision (a) uses the residence location rather than where the charter school wishes to locate because the statute refers to the schools in which the charter school students would be accommodated if they were attending other public schools of the district.

Subdivision (a) also provides an alternative method for choosing a comparison group in areas where student attendance at high school is not based on attendance areas: three schools in the school district with similar grade levels (or fewer if the school district has fewer than three schools) that the largest number of charter school students would otherwise attend.

Subdivision (b) specifies the method for determining whether the capacity of a facility provided to a charter school is reasonably equivalent to the capacity of facilities in the comparison group. The first test is the number of teaching stations: the subdivision requires that charter schools be provided facilities that have the same ratio of teaching stations to ADA as comparison group schools. To account for the possible addition of schools and classrooms to the school district's inventory, the comparisons are calculated based on the projected number of teaching stations and projected ADA. Charter school ADA is in-district classroom ADA because this ADA figure is the basis for the entitlement to facilities under Education Code section 47614. Teaching stations are calculated based on an established methodology in California Code of Regulations, Title 2, Section 1859.30, excluding portable classrooms that are temporarily available for renovation purposes.

The second test is the availability of specialized teaching station space as determined based on the grade levels served, as part of the allocation of teaching station space. Subdivision (b) states that specialized teaching station space shall be available commensurate with the number of students attending the charter school. An example of a specialized teaching station space is a laboratory classroom.

The third test is the availability of non-teaching spaces. Subdivision (b) states that these spaces shall be available commensurate with the number of students attending the charter school. Examples of non-teaching space are administrative offices and cafeterias.

Finally, the subdivision specifies that the space allocated to a charter school may be shared with school-district-oriented programs, with the school district and the charter school using the shared space at the same or different times. This paragraph is needed to clarify that space need not be allocated for the exclusive use of the charter school. It is anticipated that shared space would be used most often for specialized classrooms such as laboratories, where the charter school might use the classroom for a period each day, or non-teaching spaces such as playgrounds, where the charter school would use it at the same time as the district-operated program.

Subdivision (c) specifies the method for determining whether the condition of a facility provided to a charter school is reasonably equivalent to the condition of facilities in the comparison group. Subdivision (c) lists factors to be considered rather than providing a detailed evaluation instrument because available instruments do not appear to capture the right variables for this

purpose. Also, they would have been difficult to implement locally because they were subjective in nature and/or required training to administer. The list of factors provides a balance between overly prescriptive instruments and leaving the process completely open at the local level.

The factors include school site size; the condition of surfaces; the condition of various building systems and conformity with applicable codes; the availability of technology infrastructure; suitability for learning (lighting, etc.); and the manner in which the building is furnished and equipped.

Subdivision (c) also states that the condition of facilities housing charter schools that have converted from previously existing district-operated schools shall be considered reasonably equivalent to public school facilities for the first year. This provision is intended to smooth and simplify the conversion process.

Section 11969.4. Operations and Maintenance.

This section first clarifies that furnishings and equipment supplied to a charter school shall remain the property of the school district, consistent with language in Education Code section 47614(b) that specifies that facilities allocated for use by a charter school shall remain the property of the school district. This clarification is consistent with the requirement that school districts be responsible for providing and replacing furnishings and equipment according to the school district's replacement schedules (the replacement requirement is later in this section).

This section specifies that the charter school is responsible for the ongoing operation and maintenance of the facility and the furnishings and equipment it uses. The school district is responsible for items funded through the deferred maintenance program (such as a new roof) and the replacement of furnishings and equipment supplied by the school district according to school district replacement schedules. The responsibilities outlined in this section are parallel to the definition of facilities costs in Section 11969.6. Section 11969.6 defines what is considered a facilities cost for purposes of developing a charge to be imposed on the charter school: the items considered part of a school district's facilities costs are also the school district responsibility; the items excluded from facilities costs are the charter school's responsibility.

This section also allows school districts to require charter schools to comply with school district policies regarding operations and maintenance. The purpose of this section is to allow school districts to protect the investment they have made in their facilities and furnishings and equipment by requiring, for example, regular maintenance of boilers and the use of certain products for cleaning floors. This section states that school districts may not require charter schools to comply with policies in situations where practices significantly differ from the policies.

Section 11969.5. Availability.

This section specifies that the space allocated for use by the charter school, subject to sharing arrangements, shall be available for the charter school's entire school year and may not be sublet or used for purposes that are inconsistent with district policies and practices without permission

of the school district. This section clarifies that a charter school may use the school facilities allocated to it in a manner that is similar to the way school district-operated programs may use facilities. It also prevents the charter school from using the facility in a manner that is inconsistent with school district policies.

Section 11969.6. Location.

This section clarifies that a school district may provide facilities that are outside its boundaries to satisfy its obligation to the charter school, but is not required to do so. The proposed regulations do not require provision of facilities outside a school district's boundaries because a school district should not be required to obtain facilities that it would not be able to use for its own students if the charter school ceases to exist. This is supported by language in Education Code sections 47614(a) and (b)(1) that states that public school facilities should be shared among all students including those in charter schools--implying use of existing facilities rather than acquisition of new ones--and language that states that school districts do not have to use unrestricted general fund revenues to rent, buy, or lease facilities for charter schools.

Section 11969.7. Charges for Facilities Costs.

This section defines the method for determining the pro rata share of facilities costs that must be paid by the charter school for use of the facilities allocated to it. Education Code section 47614 requires the California Department of Education to define the term "facilities costs." The introductory language provides the formula for the calculation of the pro rata share: (1) a per-square-foot amount equal to the facilities costs that the school district pays for with unrestricted general fund revenues divided by the total space of the district, times (2) the amount of space allocated to the charter school. This formula essentially repeats the language of the statute in a restructured way that clarifies that the calculation should be based on a per-square-foot rate.

Subdivision (a) defines facilities costs to include construction and similar capital outlay costs, plus rents and leases, consistent with definitions in the *California School Accounting Manual*. Because this definition does not capture all the facilities-related expenditures that must be incurred by the school district even though a charter school is occupying the facility, the regulation adds several other types of costs to "facilities costs." First, the regulation adds the contribution from unrestricted general fund revenues to the district deferred maintenance program, which funds such items as new roofs. The calculation uses the contribution to the deferred maintenance fund rather than the expenditures from the fund for administrative simplicity (the allocation of deferred maintenance expenditures by funding source is not readily available). Second, the regulation adds the costs of projects that could be funded under the deferred maintenance program but are not. Finally, the regulation adds the costs for replacement of furnishings and equipment according to district schedules and practices. As indicated earlier, the definition of facilities costs in this section is parallel to the responsibilities outlined in Section 11969.4.

The definition in subdivision (a) does not reflect any deduction from facilities costs for rent or lease payments collected by the school district from third parties. Some school districts collect a significant amount of revenue from this source. Such a deduction might be appropriate to the

extent that a school district is presently incurring facilities costs to construct or acquire a building that is being rented or leased to a third party. The regulation does not attempt to define such a deduction because of the administrative costs necessary to distinguish this situation from others in which the rent and lease payments are not associated with facilities costs.

Subdivision (b) clarifies that the cost of facilities financed with debt shall include debt service costs. Thus, if the cost of building a facility is spread out over time using debt, a charter school will pay a share of the annual debt service costs, to the extent that those costs are financed from unrestricted general fund revenues.

Subdivision (c) clarifies the method for calculating “space allocated by the school district to the charter school” in situations where there is shared space. Specifically, the amount of shared space to be included in the “space allocated by the school district to the charter school” shall be based on the proportion of space at the facility allocated for the exclusive use of the charter school.

Subdivision (d) identifies the data that shall be used in calculating the per-square-foot rate. The rate shall be based on data for the year preceding the fiscal year in which facilities are provided. In theory, the rate could be more accurate if it were based on the fiscal year the facilities are provided rather than the immediately preceding year, but the additional accuracy is not worth the administrative problems associated with a rate that would reflect budgeted figures rather than actual expenditures, and would need updating numerous times.

Subdivision (e) requires school districts to apply the per-square-foot charge to all charter schools receiving facilities under Education Code section 47614. Subdivision (e) is intended to prevent school districts from treating charter schools unequally with respect to charges for facilities.

Section 11969.8. Reimbursement Rates for Over-allocated Space.

This section specifies a methodology for determining when a charter school must make payments for over-allocated space and how much the payments must be. Education Code section 47614 requires the State Board to adopt a reimbursement rate for over-allocated space. Payments for over-allocated space are in addition to the pro rata share payments.

Subdivision (a) identifies how to determine when payments for over-allocated space are triggered. Specifically, space is considered to be over-allocated when the actual in-district classroom ADA is less than the projections upon which the allocation was based, and the difference is greater than a threshold amount. The purpose of establishing a threshold amount is to allow some difference between actual in-district classroom ADA and the projections before payments are imposed. The threshold amount is set equal to 10 percent of the projected in-district classroom ADA or 25 ADA, whichever is greater. The 25 ADA figure is set based on the ADA accommodated in one classroom.

Subdivision (a) also specifies the formula for determining the payment amount for over-allocated space. The payment is a per-pupil amount equal to the statewide average cost avoided per pupil under the year-round education program. The “cost avoided” under this program is set by the

Legislature and currently is around \$1,300 per pupil. This figure is intended to approximate the annual per-pupil amount a school district must spend to house a student attending a school using a traditional calendar. (Thus, it is used as an estimate of the cost avoided by implementing a year-round education program instead of building new facilities). The rationale for using this figure is that the over-allocated space payments are intended to reimburse a district for the costs of housing those students who were originally projected to attend the charter school.

This reimbursement rate is applied to the difference between the actual in-district classroom ADA and the projections upon which the allocation was based. However, the reimbursement rate is halved for the amount of the difference that is less than the threshold amount. This methodology results in a lower reimbursement rate applying to smaller errors in projections.

Subdivision (b) requires the charter school to notify the school district if it anticipates it will have over-allocated space, so that the school district will have the option of using the space if it can. If the district decides it can use the space, it must notify the charter school within 30 days. The payments for over-allocated space and the pro rata share payments are reduced accordingly beginning with the date of the school district notification. The payments are reduced immediately rather than when the school district begins actually using the space so that a school district cannot effectively tie up a facility without relieving the charter school of payment obligations.

There is no precise timeline specified for the charter school notification because the charter school will have an incentive to release space as soon as possible to avoid payments. Subdivision (b) allows the school district to reduce the amount owed by the charter school for over-allocated space at its sole discretion.

Section 11969.9. Procedures and Timelines for the Request for, Reimbursement for, and Provision of, Facilities.

Education Code section 47614 requires CDE to develop procedures and establish timelines for the request for, reimbursement for, and provision of, facilities.

Subdivision (a) establishes timelines for steps that must be completed by new charter schools in order to request and obtain facilities. This section is intended to ensure that a charter school is or has a reasonable chance of becoming a viable concern before requiring the school district to plan modifications to its programs to accommodate the charter school. For example, accommodating a charter school might involve moving district-operated programs or changing attendance areas.

First, the subdivision requires that a charter school be operating in a school district before it submits a request for facilities (that is, a charter school must demonstrate that it is likely to enroll at least 80 in-district students). The subdivision further requires that, to receive facilities, new charter schools must submit a charter petition to a local education agency by November 15 of the year before the year for which facilities are requested and must receive approval of its petition by the following March 1. The purpose for requiring submission of the petition by November 15 is to allow the charter school sufficient time to incorporate in its facilities request any programmatic changes emerging from preliminary review of the petition. The deadline (see

below) for submitting a facilities request is January 1. The March 1 date provides some time for a charter school to re-submit a petition if necessary to obtain approval.

Subdivision (b) provides a timeline for submitting a facilities request to a school district: October 1 for already existing charter schools and January 1 of the previous fiscal year for new charter schools. These deadlines provide a balance between the competing demands of the school district for information early upon which to base program decisions and the charter school for more time to develop credible estimates of enrollment.

The final sentence of this subdivision states that, in the absence of a successful local school bond measure, a charter school complying with the procedures and timelines set forth in the regulations is entitled to receive facilities beginning on November 8, 2003. Under Education Code section 47614, “a school district’s responsibilities” take effect on this date for school districts not holding successful bond elections. This sentence clarifies that the obligation to provide facilities takes effect on November 8, 2003, and that the procedures and timelines established in the regulations are effective before this date. This clarification is consistent with the language of Education Code section 47614, under which the thrust of a school district’s responsibilities is providing facilities rather than accepting and reviewing facilities proposals.

Subdivision (c) specifies the material that must be included in the facilities request. The first item (A) is projections of in-district and total ADA and in-district and total classroom ADA. These projections will become the basis for determining the size of the facility the charter school must be allocated. Total ADA (in-district plus out-of-district, classroom plus non-classroom) is needed so that the school district can determine the impact on its own enrollment and on traffic and parking.

The second item (B) is a description of the methodology for the projections. This is to enable school district review of the reasonableness of the projections.

The third item (C) is documentation of the number of in-district students that are meaningfully interested in enrolling in the charter school, if relevant. The purpose of this requirement is to enable school district review of reasonableness of the projections and verification that the charter school is operating in the school district, as defined. Developing a list of meaningfully interested students is required by previously existing law as part of the process for obtaining approval of a charter petition.

The fourth item (D) is the charter school’s instructional calendar. This information is needed to advise the district when a facility allocated to the charter school must be ready for occupancy.

The fifth item (E) is information regarding the general geographic area in which the charter school wishes to locate. The school district needs this information to comply with the requirement in Education Code section 47614 that the school district make reasonable efforts to provide facilities near where the charter school wishes to locate.

The sixth item (F) is information on the charter school’s educational program that is relevant to assignment of facilities. This is any other information that the charter school wishes to convey

that might be helpful to the school district in providing facilities that meet the charter school's needs.

Subdivision (c)(2) requires information on where in-district students (in the projections and in the list of students who are meaningfully interested in enrolling) would otherwise attend school. This requirement is intended to provide information necessary for the school district to determine the comparison group of schools and to project its own enrollment.

Finally, subdivision (c)(3) allows school districts to require the charter school to submit its written facilities request on a standard form and to distribute a reasonable number of copies of the written facilities request for review by other interested parties, such as parents and teachers, or to otherwise make the request available for review. The purpose of the form requirement is to allow school districts to streamline processing of facilities requests. The purpose of the copy requirement is to facilitate input from interested parties on facilities proposals if desired by the school districts.

Subdivision (d) requires some interchange between the school district and the charter school before the school district transmits its formal offer for housing the charter school. Specifically, the subdivision identifies four steps in this interchange: school district review of the charter school's ADA projections, charter school response to school district concerns regarding the projections, school district preparation of a preliminary proposal regarding the space to be allocated to the charter school and the associated pro rata share amount, and charter school response to the proposal. The purpose of this subdivision is to encourage discussion and negotiation between the parties before a formal offer is prepared.

Subdivision (e) specifies the contents of the space allocation offer that must be submitted by a school district to a charter school requesting facilities. Subdivision (i) specifies that the information in this offer will become a major portion of the agreement between the school district and the charter school governing use of the facility. The offer must specifically identify the space exclusively allocated to the charter school and the space to be shared with district-operated programs, together with the proposed sharing arrangements. The offer must also contain the ADA assumptions upon which the allocation is based and, if there have been modifications to the projections submitted by the charter school, an explanation of the changes. The reason for including the ADA assumptions is to prevent any confusion later, because several sets of projections may have been discussed following the original submission of projections by the charter school. The ADA assumptions will be needed later to provide a basis for determining whether space has been over-allocated. Finally, the offer must provide the pro rata share amount and the payment schedule, to be based on the timing of revenues received by charter schools from the state and local property taxes. This information on payment is required so that the charter school has all the information it needs to evaluate whether to accept the offer.

The offer must be submitted to the charter school by April 1. This date is based on school district program and facility planning calendars, and charter school needs for facilities commitments as early as possible.

Subdivision (f) provides that the charter school must respond to the formal space allocation offer by May 1, or 30 days after the notice is provided, whichever is later. This provides a window for charter schools to decide whether the offer is acceptable. Charter schools must accept or reject the formal offer in its entirety (the intent is for negotiations to occur before the formal offer is provided, not after), although there is nothing to preclude the charter school and school district from negotiating after the formal offer is provided if acceptable to both parties. The length of the window (April 1 to May 1) for charter school consideration of the space allocation offer was determined by balancing the need of a charter school to carefully consider the offer against the school district's need for rapid determination of facility availability. The reason for the 30-day provision is to give the charter school some protection if the school district is late in providing the offer.

The subdivision also states that the charter school's decision to occupy the offered space commits the charter school to paying the pro rata share as identified. If a charter school rejects the offer or fails to respond, the school district can use the space and the charter school is not entitled to use school district facilities in the next fiscal year.

Subdivision (g) provides that the space allocated by the school district must be furnished, equipped and available for occupancy by the charter school at least seven days prior to the first day of instruction of the charter school. This subdivision provides a deadline for school districts to prepare the space for the charter school. The amount of time provided is comparable to, or even greater than, the amount of time school district space normally is ready for occupancy by district-operated programs.

Subdivision (h) provides that the school district and the charter school shall negotiate an agreement regarding use of and payment for the space. At a minimum, this agreement must consist of the information provided in the formal space allocation offer described in subdivision (e). This information includes such items as the ADA assumptions upon which the allocation is based, the specific space to be available to the charter school, and the amounts of and schedule for payments. Also, the agreement may include school district requirements for insurance and maintenance. The purpose of the insurance requirement is to protect school district investments in facilities in the event that a charter school is liable for damage to school district property. The purpose of the maintenance requirement is similar: to protect school district investments in facilities and furnishings and equipment by requiring charter schools to comply with school district maintenance standards.

Subdivision (i) requires the charter school to report actual ADA to the school district every time that it reports ADA to the state. The reports must break down ADA totals so the district can monitor whether the students are in-district students and whether they are in classroom-based programs. The purpose of these reports is to allow the school district to verify the accuracy of the projections upon which the facilities allocation was based (and calculate payments for over-allocated space, if appropriate), to project the impact of charter school's enrollment on the district's own enrollment, and to plan future facilities projects (including, for example, projects related to traffic and parking).

The subdivision provides that the charter school must keep records documenting the data contained in the reports. This allows verification in case questions arise.

Subdivision (j) provides that the charter school and the school district may negotiate separate agreements and/or reimbursement arrangements for specific services not considered part of facilities costs. This subdivision clarifies that separate arrangements may be made for items not covered in the regulations, and that these arrangements can involve reimbursements. These agreements might cover such things as sharing of a security patrol, allocation of utilities costs between the parties at a shared facility, or use of a copy machine.

Subdivision (k) specifies that charter school and a school district may mutually establish different timelines and procedures than provided in the regulations. This provision is intended to provide flexibility to charter schools and school districts in negotiating working relationships around the implementation of Education Code section 47614. The subdivision also allows school districts to set deadlines as much as two months earlier if they wish, provided that they notify charter schools of the deadline changes and do not change facility request deadlines or the time allowed for charter schools to respond to the school district's offer of space. This provision is intended to recognize the varying facility planning schedules of school districts.

PUBLIC HEARING AND PUBLIC COMMENTS

CDE received written comments from five organizations: Coalition for Adequate School Housing (CASH), California Network of Educational Charters (CANEC), Los Angeles Unified School District (LAUSD), San Diego Unified School District (SDUSD), and California School Boards Association (CSBA). CANEC submitted two letters, the first in response to the CASH comments and the second in response to the SDUSD comments. CANEC did not respond to the LAUSD and CSBA comments, which were submitted immediately before the hearing. LAUSD and CSBA, along with a sixth organization, Ridgecrest Charter School, provided oral testimony at the hearing. The State Board adopted five amendments to the regulations in response to the comments. Below is a section-by-section response to the comments.

Section 11969.1. Purpose.

Background: The regulations state "This article governs provision of facilities by school districts to charter schools under Education Code section 47614."

Issue: LAUSD requested additional language to clarify that existing arrangements between charter schools and school districts could be continued without being subject to the procedures set forth in these regulations.

Response: Clarification is not needed. There is nothing to preclude school districts from continuing to make arrangements with charter schools outside the Proposition 39 regulations.

Section 11969.2, subdivision (a). Definition of average daily classroom attendance (classroom ADA).

Background: The regulations define classroom ADA as ADA used for classroom-based apportionments under Education Code section 47612.5 (Education Code section 47612.5 was added by SB 740). There were comments on two issues.

Issue 1: CASH proposed adding “No independent study students shall be eligible for facilities pursuant to this article.” CANEC opposed the CASH amendment, saying that the sentence is unnecessary because SB 740 already defines independent study as not included in classroom-based instruction and confusing because CASH’s proposed amendment does not cover other types of non-classroom-based instruction that are mentioned in SB 740. Ridgecrest Charter School supported the use of the definition of classroom-based instruction under SB 740.

Response: This change is unnecessary and confusing for the reasons cited by CANEC. Also, classroom-based instruction will be reported by charter schools in conjunction with receiving funding and will be subject to audit; CASH’s suggestion would require new reporting and record-keeping that is unnecessary.

Issue 2: SDUSD suggested using enrollment as the basis for allocating facilities rather than ADA. CANEC opposed this change.

Response: This is inappropriate because statute specifically requires the use of ADA for determining facility entitlements under Proposition 39. Using enrollment instead of ADA would require a definition of “classroom enrollment” and would be unnecessarily confusing.

Section 11969.2, subdivision (b). Definition of operating in the school district.

Background: The regulations define a charter school as operating in the school district “if the charter school meets the requirements of Education Code section 47614(b)(5) regardless of whether the school district is or is proposed to be the authorizing entity for the charter school and whether the charter school has a facility inside the school district’s boundaries.”

Issue: SDUSD suggested limiting “operating” charter schools to those approved by the local governing board. CSBA suggested requiring charter schools requesting facilities to be physically located in the district. CANEC opposed the SDUSD change.

Response: The definition of “operating” in statute focuses on the possibility that a charter school may or may not actually be serving students at the time of the facilities request; thus, a charter school that is not yet actually serving students (and thus has no physical location yet) may nevertheless be considered to be “operating.” The reason for the regulatory section is to clarify that the identity of the chartering entity and the physical location of the charter school are not relevant. Doing otherwise would be inconsistent with statute. The thrust of the statutory language is to require provision of facilities for students the district would otherwise be serving—and this can occur whether or not the charter is approved by the district and where the charter school is physically located.

Section 11969.2, subdivision (c). Definition of in-district students.

Background: The regulations state that “a student attending a charter school is an ‘in-district student’ of a school district if he or she is entitled to attend the schools of the school district and could attend a school district-operated school.”

Issue: SDUSD states that school districts will not have information on the residence of students and asks what penalty there will be for charter schools to misrepresent student residence. CANEC responded that a school district could reject a request for facilities that it does not find credible and, if it believes the charter school knowingly misrepresented the residence of students, it could pursue revocation of the charter.

Response: SDUSD is correct that school districts will not have information on the residence of students at the outset. However, they will have access to this information when charter schools submit ADA data for funding purposes. Only in-district students can be counted for purposes of determining whether facility space has been over-allocated, and over-allocations of space can result in substantial financial penalties being imposed on charter schools.

Section 11969.2(d). Definition of contiguous.

Background: The regulations define facilities as contiguous “if they are contained on the school site or immediately adjacent to the school site. If the in-district average daily classroom attendance of the charter school cannot be accommodated on any single school district school site, contiguous facilities also includes facilities located at more than one site, provided that the school district shall minimize the number of sites assigned and shall consider student safety.”

Issue: CSBA proposed to modify “minimize” to “make every effort to minimize.”

Response: This amendment is unnecessary and redundant. To minimize the number of sites means to make the number of sites as small as possible. This is not any different than making every effort to make the number of sites as small as possible.

Section 11969.2, subdivision (e). Definition of furnished and equipped.

Background: The regulations define “furnished and equipped” to mean that “a facility contains all the furnishings and equipment necessary to conduct classroom-based instruction, including desks, chairs, and blackboards.”

Issue: SDUSD suggested further clarification that computers and office equipment are not required to be provided. CANEC opposed this change. CANEC says that computers and office equipment should be included.

Response: The language does not need clarification. School districts are not responsible for providing such items as computers and office equipment. There were lengthy discussions about the definition of “furnishings and equipment” in the meetings of a working group that was convened to discuss issues related to these regulations. There are many possible methods to distinguish between what must be supplied by the school district and what must be supplied by the charter school (useful life exceeding a certain number of years, funding source, whether

capitalized, value exceeding a certain amount, etc.)—and the chosen method affects which party is responsible for maintenance and replacement and the calculation of charges to be imposed on the charter school for use of the facility. The regulations seek to define “furnishings and equipment” in a minimal manner, solely as what is needed to provide classroom-based instruction, to make the method as clean as possible and to minimize possible disputes regarding, for example, selection, maintenance, and replacement of computers and copy machines; and calculation of facilities charges.

Section 11969.2, proposed new subdivision. Definition of “reasonable efforts”

Background: The statute says “The school district shall make reasonable efforts to provide the charter school with facilities near to where the charter school wishes to locate, and shall not move the charter school unnecessarily.” The regulations do not provide any definition of reasonable effort.

Issue: LAUSD suggested language stating that (1) providing facilities within a two-mile radius of a point designated by the charter school shall be considered a reasonable effort, (2) school districts shall not be required to allocate space in situations where the school district would be required to increase involuntary busing or impose multi-track year-round education on additional students, and (3) school districts shall not be required to share space where fundamental differences between the educational programs of the charter school and the school district would disrupt education at either the charter school or the school district school.

Response: The reasonable effort issue was discussed at length in the working group meetings. The regulations are silent on this issue because the working group could not find a way to improve the language of the statute, which strikes a balance between favoring charter school students and favoring students in school district-operated programs. It is important to note that charter schools would suffer the same level of overcrowding that school district schools have; the facilities provided to charter schools would have the same number of classrooms per ADA as a group of school district comparison schools.

The provision regarding fundamental differences in educational programs could potentially eliminate the possibility of sharing of facilities altogether, which is inconsistent with statute. The very purpose of charters schools is to offer non-traditional educational approaches. This provision would allow school districts to deny facilities to a charter school if the charter school has a non-traditional approach.

Section 11969.3, subdivision (b). Definition of conditions reasonably equivalent with respect to capacity.

Background: Statute requires school districts to supply facilities sufficient to accommodate charter school in-district classroom ADA in “conditions reasonably equivalent to those in which they would be accommodated if they were attending other public schools of the district.” The regulations state that facilities must be provided in the same ratio of teaching station space to ADA as available in a group of school district-operated comparison schools. The regulations also

state that non-teaching station space must be available commensurate with the in-district classroom ADA of the charter school.

Issue 1: SDUSD cited a situation where incremental increases might be requested year after year as a charter school grows, and recommends that some limit be established to prevent an unreasonable and uneconomical burden. CANEC opposed any change.

Response: Statute does not allow such limits on a school district's responsibility.

Issue 2: SDUSD requested a clarification to specify the exclusion of teacher lounges and libraries in non-teaching space. CANEC opposed SDUSD's proposed change and requested a clarification to specify that non-teaching space to be provided by the school district shall include administrative space.

Response: The State Board adopted a change to clarify that non-teaching space includes administrative space. With respect to teacher lounges and libraries, there is an existing methodology for identifying teaching station and non-teaching station space that is cited in the regulation, and this proposed change would conflict with the existing methodology and would be confusing.

Section 11969.3, subdivision (c). Definition of conditions reasonably equivalent with respect to condition.

Background: Statute requires school districts to supply facilities sufficient to accommodate charter school in-district classroom ADA in "conditions reasonably equivalent to those in which they would be accommodated if they were attending other public schools of the district." The regulations provide a list of factors to consider in determining whether the condition of facilities provided to charter schools is reasonably equivalent. Among other things, the list includes "the availability and condition of technology infrastructure." There were two issues raised regarding facility condition.

Issue 1: SDUSD and LAUSD requested clarification that facilities supplied to charter schools need not comply with the Field Act. CANEC opposed this change.

Response: The Field Act was enacted to protect the children of the state against injury in an earthquake. Statute is not clear with respect to whether facilities provided to charter schools under Proposition 39 must comply with the Field Act. This is a matter where the regulations should not allow any lesser level of protection than the statute; consequently, the regulations are silent on the issue. Under the regulations, whether the facilities comply with the Field Act will be a matter decided in negotiations between the charter school and the school district.

Issue 2: CSBA proposes to delete the word "infrastructure." CSBA appears to be concerned that the section seems to mandate the duplication of district-wide infrastructure in situations where another configuration may be more appropriate.

Response: This section merely lists factors to be considered in determining the condition of a facility. There is no requirement that facilities have any particular configuration for technology. If duplicating the district-wide infrastructure would not work in a particular situation, there is nothing to preclude the parties from making other arrangements.

Section 11969.4, subdivision (b). Operations and maintenance.

Background: The regulations specify that the charter school is responsible for operations and maintenance of the facility provided, while school districts remain responsible for projects eligible for inclusion in the school district's deferred maintenance plan and replacement of furnishings and equipment. School districts may require charter school to comply with policies regarding operations and maintenance, although not when a school district's practices substantially differ from its policies.

Issue 1: CASH suggested that school districts should be responsible for projects actually included in the deferred maintenance plan, not just those eligible to be included. CASH stated that a charter school should be responsible for maintenance necessary due to inadequacies in ongoing maintenance. CANEC opposed the CASH amendment, saying that the school district will continue to own the facility and receives deferred maintenance funding from the state. Further, the charter school in fact pays a portion of general fund deferred maintenance costs through its pro rata share.

Response: The CASH language would make the charter school responsible for projects that the school district chooses not to fund although the projects are eligible for state deferred maintenance funding. For the reasons cited by CANEC, this section should not be changed.

Issue 2: CASH suggested clarifying that the school district responsibility for replacing furnishings and equipment only applies to furnishings and equipment supplied by the school district. CSBA suggested language stating that school districts should not have to replace furnishings and equipment if they are abused.

Response: The State Board adopted the CASH amendment but used different wording because the section reference proposed by CASH is to a definition section. The CSBA proposal is unnecessary; the school district is not required to replace furnishings and equipment more frequently than is required under school district replacement schedules and practices.

Issue 3: CASH suggested requiring charter schools to comply with policies regarding operations and maintenance, instead of giving school districts the option of requiring charter schools to do so. CANEC opposes the CASH amendment, saying that it might require charter schools to comply with unrealistic policies that the school district does not itself comply with.

Response: The CASH amendment is unnecessary and introduces confusion: it would be difficult to reconcile the sentence as proposed to be amended with the last sentence of the section, which states that districts may not require compliance in situations where school district practices differ substantially from written policies.

Issue 4: CSBA proposed to delete the final sentence, which provides that charter schools need not comply with operations and maintenance policies that the school district itself does not comply with.

Response: This proposal is not reasonable; charter schools should not be held to a higher standard than the school district itself.

Section 11969.5, subdivision (b). Availability.

Background: The regulations specify that facilities supplied to a charter school “may not be sublet or used for purposes other than those that are consistent with school district policies and practices for use of other public schools of the school district without permission of the school district.”

Issue: CASH suggested amending the section to specify that facilities may not be sublet or used for purposes other than classroom instruction without permission of the school district. CASH believes that since the facilities are the property of the school district, the school district should control use of the space for purposes other than for classroom instruction. CSBA proposed requiring charter schools to secure prior permission to use the facility for any purpose not explicitly provided for in the charter. CANEC opposed the CASH amendment, saying that charter schools will need facilities for purposes other than classroom instruction (CANEC cited parent meetings, governance council meetings, school performances, and bake sales) and should be held to the same standard for using the space as school district schools, that is, school district policies regarding non-instructional uses of the space.

Response: This proposal is not reasonable; charter schools should not be held to a more restrictive standard than other schools in the school district regarding use of facilities.

Section 11969.7. Charges for facilities costs.

Background: The regulations specify a formula for calculating charges that may be imposed by a school district and specify that charges imposed by a school district must be applied equally to all charter schools. There were three issues raised regarding this section.

Issue1: CASH suggested that the per-square-foot charge imposed on charter schools should be calculated based only on the amount of reasonably equivalent classroom space in the school district inventory, not on the total space of the school district. CANEC opposed the CASH amendment because it will create disputes in its application.

Response: The statute refers to total space, not reasonably equivalent space or classroom space. In addition, the proposed change would result in unreasonable administrative costs as school districts seek to determine what amount of space is reasonably equivalent.

Issue 2: CASH proposed defining “unrestricted general fund revenues.” CANEC opposes the CASH amendment because not every school district has implemented the standardized account code structure (SACS).

Response: The State Board adopted an amendment clarifying the term as requested by CASH, but in a simpler way that does not refer to SACS. The amendment is as follows: “The pro rata share amount shall not exceed (1) a per-square-foot amount equal to those school district facilities costs that the school district pays for with unrestricted general fund revenues, as defined in the California School Accounting Manual, divided by the total space of the school district times (2) the amount of space allocated by the school district to the charter school.” All school districts must comply with the California School Accounting Manual.

Issue 3: CASH proposed an amendment stating that charges imposed on charter schools should be applied equally to all charter schools at a particular site, not to all charter schools across the school district. This is because district costs can vary among sites. CANEC opposed the CASH amendment because it would create confusion and “multiplicity of work.”

Response: The statute requires the calculation to be performed school district-wide, and does not refer to a site-by-site determination of facility costs. Also, the calculation methodology proposed by CASH would result in unnecessary administrative costs to determine the correct amount of the charge.

Section 11969.8. Reimbursement rates for over-allocated space.

Background: The regulations specify that space is considered to be over-allocated when the actual in-district classroom ADA is less than the projections upon which the allocation was based, and the difference is greater than a threshold amount. The threshold amount is set equal to 10 percent of the projected in-district classroom ADA or 25 ADA, whichever is greater. The 25 ADA figure is set based on the ADA accommodated in one classroom.

The per-pupil reimbursement rate is applied to the difference between the actual in-district classroom ADA and the projections upon which the allocation was based. However, the reimbursement rate is halved for the amount of the difference that is less than the threshold amount. This methodology results in a lower reimbursement rate applying to smaller errors in projections.

The purpose of establishing a threshold amount using a lower reimbursement amount for smaller numbers of students is to allow some difference between actual in-district classroom ADA and the projections before payments are imposed.

Issue: CASH proposed amendments to reduce the threshold to 20 students and to eliminate the reduction in the reimbursement amount for some students. CASH states that the language as proposed allows an elementary charter school to take two classrooms for 40 students and pay for only one of them. CANEC opposed the CASH amendment because it believes the proposed regulation is sufficiently harsh to discourage over-estimation by charter schools.

Response: CASH is correct that under the proposed regulation, a charter school could receive more space than it may ultimately need without penalty. This could happen also under CASH’s recommended amendment. Errors in projecting the number of students are inevitable; the issue is

how to allow small errors to be made without penalty while establishing a sufficient incentive to ensure that such errors are minimized. This issue was a matter of lengthy discussion in the working group. The regulations as proposed represent one method for striking a balance between allowing small errors while imposing penalties on larger errors; the CASH amendments represent another approach that increases the incidence and level of penalties imposed.

Section 11969.9, subdivisions (a), (b), and (k). Procedures and timelines—submission of facilities requests.

Background: The regulations specify timelines for submitting facilities requests. The timelines are different for new charter schools vs. existing charter schools. To receive facilities, a new charter school must have submitted its petition by November 15 and receive approval by March 1. It must be operating (i.e. have 80 signatures on a petition) before it submits its facilities request, and must submit the request by January 1. An existing charter school must submit its facilities request by October 1. The regulations further allow school districts and charter schools to mutually establish different timelines and procedures.

Issue: There were many comments about the timelines. CASH proposed amendments (1) eliminating the special consideration for new charter schools and (2) allowing school districts to provide non-equivalent space for 24 months. First, CASH believes the requirement that a charter school be operating before it submits its request is inconsistent with the requirement that its petition be approved by March 1. Second, CASH cites the difficulties school districts will have in providing facilities to charter schools under the timelines for both new charter schools and existing charter schools.

SDUSD stated that providing facilities according to the proposed timelines is unrealistic. LAUSD stated that timelines are unrealistic particularly for districts with large numbers of multi-track year-round schools, and suggested allowing districts to move timelines earlier in the year. CSBA proposed to allow a charter school to submit a facilities request only if it has an approved petition.

CANEC opposed the CASH amendments because they are in conflict with statute. In response to the SDUSD proposal, CANEC opposed any change to the timelines.

Response: The two requirements cited by CASH are not inconsistent as CASH states. Under the statute, a charter school is “operating”—and can submit a facilities request—if it has 80 signatures on a petition. This can occur before the charter school has been approved by its authorizing entity. Second, the statute clearly anticipates that school districts would be required to provide facilities along a short timeline (i.e. with requests submitted in the fiscal year before the actual provision of facilities, not 24 months beforehand). The statute also anticipates that providing facilities will not initially be a matter of building new facilities, but of sharing existing facilities.

Timelines were the subject of much discussion in the working group meetings. The timelines in the proposed regulations recognize facility allocation procedures in place in school districts, but

also recognize the problems a new charter school will have in developing accurate projections of ADA so early in the year.

The State Board adopted an amendment in subdivision (k) in response to LAUSD's concerns that allows school districts to move the process earlier in the year, provided that the school district notifies charter schools of the change and does not change the dates for submissions of requests and time periods for charter school responses to proposals. It is unreasonable to advance the facilities request any earlier because of the impossibility of developing pupil forecasts over one year before the start of school.

Section 11969.9, subdivision (b). Procedures and timelines—effective date.

Background: The regulations specify that “In the absence of a successful local school bond measure, a charter school making a request for facilities under this article in compliance with the procedures and timelines established in this section shall be entitled to receive facilities beginning on November 8, 2003.”

Issue: LAUSD commented that these timelines are unrealistic and in effect, require that a school district start its process many months earlier than November 2003.

Response: LAUSD and other school districts have enough warning to put procedures in place before November 2003. The substance of the responsibilities referred to in the statute is the provision of facilities, not the receipt and processing of requests.

Section 11969.9, subdivision (c). Procedures and Timelines—request form.

Background: The regulations do not specify request forms for charter schools.

Issue: There was discussion during the public hearing regarding a requirement that charter schools to use standard forms for facilities requests.

Response: The State Board adopted an amendment saying that school districts can use standardized forms to be available from CDE if they wish.

Section 11969.9, subdivision (d). Procedures and timelines—period for review of preliminary proposal.

Background: The regulations require the school district to give a charter school a reasonable opportunity to respond to a preliminary facilities proposal before the school district issues a final proposal.

Issue: CSBA proposed to stipulate that the opportunity to review and comment shall not unduly delay the school district in providing final notification by the required date.

Response: This amendment is unnecessary. The school district must provide its proposal to the charter school in enough time that the charter school has an opportunity to respond. There is

nothing in the regulation to preclude a school district from setting a deadline for receipt of comments, provided that the deadline is reasonable.

Section 11969.9, subdivision (f). Procedures and timelines—notification of space acceptance.

Background: The regulations provide that “The charter school must notify the school district in writing whether or not it intends to occupy the offered space. This notification must occur by May 1 or 30 days after the school district notification, whichever is later. The charter school’s notification can be withdrawn or modified before this deadline.”

Issue: CSBA proposed to amend this section to say that the charter school may not modify or withdraw its notification if the school district has not already incurred costs to comply with the notification.

Response: The school district is already on notice that the charter school is permitted to withdraw or modify its proposal and should behave accordingly. The effect of the amendment would be to ensure that a charter school would not provide any indication of its intentions until April 30.

Section 11969.9, subdivision (g). Procedures and timelines—space availability.

Background: The regulations specify that space shall be made available no later than seven days prior to the first day of instruction.

Issue: CANEC proposes amendments to require provision of space “as soon as possible” but no later than seven *business* days before the first day of instruction. CSBA proposes to amend this section to say that if a majority of school district space is not ready by this time, the charter school must wait along with school district staff.

Response: First, “as soon as possible” is unnecessary and meaningless. Second, the original language was drafted in recognition of school district schedules in getting space ready for the start of a new school year. The timeline in the proposed regulation in fact will give charter schools their space before space is ready for most school district programs. Finally, charter schools must have a time certain to be able to move into new space. For them, it is not a matter of reopening classrooms that have been unoccupied all summer; in some cases it is a matter of moving a whole school.

Section 11969.9. Procedures and timelines—general.

Issue 1: The regulations do not address the use of developer fees for charter school facilities. SDUSD proposes amendments to allow school districts to use developer fees for charter school facilities.

Response: This change is unnecessary. There is nothing in current law to preclude using these funds for charter school facilities.

Issue 2: The regulations do not address the dispute resolution process. Ridgecrest Charter School and SDUSD referred to dispute resolution procedures in their comments.

Response: Dispute resolution is not addressed in these regulations. There is another set of regulations being considered that will address this issue.

DISCLOSURES

These proposed regulations do not impose a mandate on local agencies or school districts.

The State Board has determined that no alternative considered by the State Board or that has otherwise been identified and brought to the attention of the State Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to the affected private persons than the proposed action.

The State Board has made an assessment and determined that the adoption of the proposed regulations will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.